

STATE OF MICHIGAN  
COURT OF APPEALS

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MARK CHURELLA, SUSAN RADTKE, and  
PETER TREBOLDI,

Plaintiffs-Appellants,

v

PIONEER STATE MUTUAL INSURANCE  
COMPANY, DAN CZMER, JACK D'ARCY,  
HARLAN GINGRICH, ROBERT WEST,  
CARLETON WILSON, DALE LITTLE,  
GORDON GINGRICH, and MILTON  
TIMMERMAN,

Defendants-Appellees,

and

ATTORNEY GENERAL, COMMISSIONER OF  
THE OFFICE OF FINANCIAL AND  
INSURANCE SERVICES, and NATIONAL  
ASSOCIATION OF MUTUAL INSURANCE  
COMPANIES,

Intervening Defendants-Appellees,

and

MGNISH DENNEHY AGENCY, INC. and LORI  
SMITH,

Defendants.

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FOR PUBLICATION  
August 28, 2003  
9:00 a.m.

No. 238695  
Wayne Circuit Court  
LC No. 96-635359-CZ

Updated Copy  
October 24, 2003

Before: Donofrio, P.J., and Bandstra and O'Connell, JJ.

BANDSTRA, J. (*concurring*).

I concur with the majority that we should affirm in this case. However, the decision that the policyholders have no right to compel distribution of a surplus makes it unnecessary to

consider whether the directors violated the business judgment rule in failing to make that distribution. I would not reach that second question and note that, by doing so, the majority opinion might be misread as indicating that policyholders such as those involved here would have a right to compel a distribution if they could allege and prove that the business judgment rule was violated. I do not read the majority opinion to have that import and write separately to point that out.

Further, I note that our decision that the policyholders have no right to compel a distribution should not be viewed as unduly harsh. They are not without a remedy. If a majority of policyholders thinks that a distribution should be made, they can elect new board members who share that view.

/s/ Richard A. Bandstra